

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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CHARLES

LORETTA STARVUS STACY, AL  
RICHMOND, PHILIP MARSHALL  
CONNELLY, DOROTHY ROSEBELUM  
HEALEY, ERNEST OTTO FOX,  
WILLIAM SCHNFIDERNAN, CARL  
RUDE LAMBERT, HENRY SLEINBERG,  
OLETA O'CONNOR YATES, ROSE  
CHERNIN KUSNITZ, MARY BERNADETTE  
DOYLE and ALBERT JASON LIMA,

No. 400

Petitioners-Appellants,

-vs-

JAMES J. BOYLE, United States  
Marshal,

Respondent.

TRANSCRIPT OF RECORD ON APPEAL

(ERNEST OTTO FOX)

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Notice Of Appeal

Designation Of Record

1 MARGOLIS and McTERNAN  
112 West Ninth Street  
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3 and  
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6 Attorneys for Petitioner

7  
8 IN THE UNITED STATES DISTRICT COURT  
9 IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
10 CENTRAL DIVISION

11 ERNEST OTTO FOX,

12 Petitioner,

13 v.

14 JAMES J. BOYLE, United  
States Marshal,

15 Respondent.  
16

No. 13440 PH

PETITION FOR WRIT OF

HAPEAS CORPUS

17  
18 TO THE JUDGES OF THE UNITED STATES DISTRICT FOR THE SOUTHERN  
19 DISTRICT OF CALIFORNIA, CENTRAL DIVISION:

20 Ernest Otto Fox, the petitioner above named  
21 hereby petitions this honorable Court for a writ of habeas corpus  
22 directing the respondent James J. Boyle, United States Marshal  
23 for the Southern District of California, in whose custody peti-  
24 tioner is now restrained of his liberty, to produce the body of  
25 your petitioner, Ernest Otto Fox, before this Court at  
26 a time and place specified and then and there to show cause why  
27 petitioner should not be released from the custody of the re-  
28 spondent upon bail in such reasonable sum as may be determined  
29 by this Court; and in support thereof, your petitioner alleges  
30 as follows:

31 I.

32 On July 25, 1951, a warrant was issued by Howard V.



1 Calverley, United States Commissioner in the Southern District of  
2 California, pursuant to a complaint charging your petitioner and  
3 one William Schneiderman, with conspiracy to commit offenses  
4 against the United States prohibited by Section 2 of the Smith Act,  
5 54 Stat. 671.

6 II.

7 On July 26, 1951, petitioner was unlawfully arrested by agents  
8 of the Federal Bureau of Investigation who produced no warrant for  
9 arrest and stated that they needed no warrant of arrest for your  
10 petitioner although your petitioner demanded the production of a  
11 warrant of arrest; that said agents declined to state the reason  
12 for your petitioner's arrest or the existence of any charges  
13 against petitioner or the fact that a warrant had been issued; and  
14 thereupon forcibly took petitioner into custody.

15 III.

16 Following petitioner's arrest as aforesaid and on July 26,  
17 1951, petitioner was arraigned before United States Commissioner  
18 Francis St. J. Fox in San Francisco and by said Commissioner  
19 was ordered to be held in custody upon bail fixed by said Com-  
20 missioner in the sum of \$75,000, and by virtue of such order  
21 your petitioner was confined in the County Jail of the City  
22 and County of San Francisco in the custody of the acting United  
23 States Marshal.

24 IV.

25 Thereafter and on or about July 27, 1951, petitioner made  
26 application to the Honorable Louis E. Goodman, a judge of the  
27 United States District Court for the Northern District of Cal-  
28 fornia for a reduction of said bail. On said day the said  
29 District Judge modified the aforementioned order of the said  
30 Commissioner and did make his order fixing bail in the sum of  
31 \$50,000. In fixing the said sum the District Judge ruled that  
32 the narrow question before him was the amount of bail which

1 should be fixed pending removal to this Court where the com-  
2 plaint originally issued. By virtue of said order of said Judge  
3 petitioner remained confined in the County Jail of the City and  
4 County of San Francisco in the custody of the acting United  
5 States Marshal.

6 V.

7 Thereafter, on July 28, 1951, petitioner filed a petition  
8 for writ of habeas corpus to the said Honorable Louis E. Good-  
9 man, for a reduction of bail and the said Judge, basing his  
10 ruling on the record of proceedings of July 27, 1951, denied  
11 the petition.

12 VI.

13 Upon information and belief, the United States Attorney  
14 for the Southern District of California, summoned a Grand Jury  
15 to convene on July 31, 1951, at 9 A.M. and in the space of  
16 about fifteen minutes the said Grand Jury returned the indict-  
17 ment herein, charging your petitioner together with the above-  
18 mentioned defendants with a conspiracy to violate Section 2 of  
19 the Smith Act, 54 Stat. 671.

20 VII.

21 On August 1, 1951, petitioner was removed from the County  
22 Jail of the City and County of San Francisco and brought to  
23 the County of Los Angeles where petitioner was confined in the  
24 County Jail of the County of Los Angeles under the custody of  
25 the United States Marshal James J. Boyle.

26 VIII.

27 Thereafter and on August 2, 1951, petitioner was taken  
28 before the Honorable James M. Carter, the judge of this Court  
29 before whom the indictment was returned. Upon information and  
30 belief, the true bill returned against the defendants contained  
31 no recommendation by the Grand Jury relative to bail. Upon  
32 information and belief, the names of the defendants were written

1 on a copy of the indictment with the notation of \$75,000 for all  
2 defendants except the defendant William Schneiderman, where the  
3 notation was \$100,000, and that these writings were unsigned.  
4 Upon arraignment before the said Judge no further reference was  
5 made to bail.

6 IX.

7 Thereafter and on August 6, 1951, petitioner moved in the  
8 United States District Court for the Southern District of Cali-  
9 fornia, Central Division, to fix bail in a reasonable sum or if  
10 bail had been fixed in the sum of \$75,000 as aforesaid, then for  
11 a reduction of this excessive bail to a reasonable amount.

12 X.

13 On August 6, 1951, the aforesaid motion to fix or reduce  
14 bail came on for argument before the Honorable James M. Carter,  
15 United States Judge for the Southern District of California, Cen-  
16 tral Division.

17 XI.

18 Before the commencement of the argument of the motion to  
19 fix or reduce bail your petitioner along with the other defen-  
20 dants named in the indictment herein except William Schneiderman  
21 filed with the said Court an affidavit of personal bias and pre-  
22 judice and requested the said Court to disqualify itself and to  
23 transfer the hearing on bail to another judge of the District  
24 Court pursuant to the provisions of 28 U.S.C.A. Section 144;  
25 that said Judge declined to disqualify himself and held the affi-  
26 davit of personal bias and prejudice legally insufficient on  
27 August 7, 1951.

28 XII.

29 That thereupon, and at the request of counsel for one of  
30 the defendants herein, Philip Marshall Connelly, the said Judge  
31 James M. Carter withheld his ruling on the said Connelly's motion  
32 to fix or reduce bail until an application could be made to the



1 United States Court of Appeals for the Ninth Circuit for a  
2 ruling on the sufficiency of the aforesaid affidavit of bias  
3 and prejudice.

4 XIII.

5 That thereafter, the motion to fix or reduce bail on your  
6 petitioner's behalf was argued before the said Judge and on  
7 August 8, 1951, your petitioner's bail was fixed at the sum of  
8 \$50,000.

9 XIV.

10 Thereafter, on August 13, 1951, your petitioner filed a  
11 petition for writ of habeas corpus in this Court praying that  
12 the writ issue and that petitioner be released from the custody  
13 of the respondent upon reasonable bail, and on the said day the  
14 writ was issued by the Honorable William C. Mathes, a Judge of  
15 this Court and made returnable before said Judge on August 15,  
16 1951.

17 XV.

18 On August 15, 1951, the said writ came on for hearing before  
19 the said Judge William C. Mathes, and after hearing, and by  
20 order dated August 17, 1951, the said petition was dismissed  
21 and the writ discharged.

22 XVI.

23 On August 18, 1951, your petitioner filed a notice of ap-  
24 peal to the United States Court of Appeals for the Ninth Cir-  
25 cult from the aforesaid order discharging the writ of habeas  
26 corpus.

27 XVII.

28 Thereafter, and on August 24, 1951, the United States Court  
29 of Appeals rendered its decision on the application of the de-  
30 fendant herein, Philip Marshall Connelly, to disqualify the  
31 aforesaid Judge James M. Carter, and the said Court did hold  
32 that the aforesaid affidavit of bias and prejudice was legally



1 sufficient and ordered the said Judge to proceed no further  
2 respecting the said Connelly's bail proceedings or in connec-  
3 tion with the said Connelly's prosecution under the indictment.

4 XVIII.

5 In view of the decision of the Court of Appeals, and  
6 because of the doubt created thereby as to whether the said  
7 Judge James M. Carter had the power of jurisdiction originally  
8 to fix or reduce bail for petitioner or the other petitioners  
9 herein, after the aforesaid joint affidavit of bias and preju-  
10 dice was filed, the petitioner decided to withdraw the afore-  
11 said appeal.

12 XIX.

13 On August 27, 1951, the United States Attorney for the  
14 Southern District of California, counsel for the respondent,  
15 and counsel for the petitioner stipulated in writing to dis-  
16 miss the aforesaid appeal and said stipulation was filed with  
17 the clerk of the United States Court of Appeals for the Ninth  
18 Circuit in accordance with Rule 16 of the said Court.

19 XX.

20 On August 29, 1951, petitioner together with the other de-  
21 fendants has brought before the said James M. Carter who for-  
22 mally disqualified himself, and thereupon the proceedings were  
23 assigned by the presiding Judge of the said District Court to  
24 the aforesaid Judge William C. Mathes.

25 XXI.

26 On August 29 and 30, 1951, argument on motions to fix or  
27 reduce bail were made before the said Judge William C. Mathes  
28 and the said Judge on August 30, 1951, fixed bail for petition-  
29 er in the sum of \$50,000. At the same time, the said Judge set  
30 September 18, 1951 as the time for filing motions and September  
31 26 as the time for argument of said motions; and fixed Septem-  
32 ber 10, 1951, as the day for the appearance of counsel to de-

1 termine the date of trial which the said Judge indicated would  
2 be October 30, 1951, unless strong reason was shown to the  
3 contrary.

4  
5 XXII.

6 Your petitioner is wholly unable to furnish bail in the  
7 sum of \$50,000 and by virtue thereof all the proceedings here-  
8 tofore had herein which have confined your petitioner in the  
9 County Jail have unlawfully deprived petitioner of liberty and  
10 abridged the rights guaranteed petitioner by the Fifth and  
11 Eighth Amendments to the Constitution of the United States.  
12 Exhibits A and B annexed hereto and made a part hereof clearly  
13 reveal that petitioner has been denied equal justice by the  
14 action of the Court in fixing bail at the grossly excessive sum  
15 of \$50,000.

16  
17 XXIII.

18 Petitioner is advised by Counsel that under the Constitu-  
19 tion, petitioner is entitled to bail as a matter of right and  
20 that the requirement of excessive bail is a denial of bail.  
21 Your petitioner is entitled to freely prepare a defense, to  
22 consult with counsel and witnesses, and all of this is denied  
23 by the unlawful confinement herein.

24  
25 XXIV.

26 Petitioner was born in Germany and brought to this country  
27 at the age of four years, and has lived and resided in this co-  
28 try for forty-two years, being now 46 years of age. He has wor-  
29 as a seaman, warehouse worker and labor organizer.

30  
31 XXV.

32 Petitioner is and has been for the past fifteen years mar-



1 to a citizen of the United States, and has resided with his wife  
2 in San Francisco, California, in the same house for the past six  
3 years. Petitioner's income is \$40 per week and his wife's income  
4 is \$60 to \$65 per week.

5  
6 XXVI.

7 On August 1, 1950, petitioner was arrested upon a warrant for  
8 his deportation, charging in essence that he was an alien who,  
9 after lawful entry into the United States, had become a member  
10 of and affiliated with an organization that advocated and taught  
11 the overthrow by force and violence of the government of the  
12 United States, to-wit, the Communist Party of the United States  
13 of America. On August 2, 1950, petitioner was released upon  
14 ing bond in the sum of \$5,000 and thereafter complied with all  
15 the terms and conditions of said release upon bond. Notwith-  
16 standing, on or about October 22, 1950, without any cause or ex-  
17 cuse, petitioner was again seized and imprisoned by the Immigra-  
18 tion authorities of the Department of Justice for and in connec-  
19 tion with the same grounds set forth as above, in the said de-  
20 portation warrant of arrest, and was held without bail.

21  
22 XXVII.

23 Upon application for a petition of habeas corpus, and upon  
24 hearing thereof, petitioner was ordered released on bail of \$5,000  
25 by order of the Honorable Michael J. Roche, Chief Judge, District  
26 Court of the United States for the Northern District of California,  
27 in proceedings numbered 30115 in said Court. He supplied such bail  
28 and ever since, until his arrest on July 26, 1951, as aforesaid,  
29 has been at large on said bail, and has faithfully fulfilled all  
30 the requirements and obligations, and has complied with all the  
31 terms and conditions, of his said release on bond, and has attend-  
32 ed at all such times and places as petitioner has been ordered to

1 attend in proceedings before said Immigration authorities which  
2 have subsequently taken place.

3  
4 XXVIII.

5 Petitioner hereby states and represents to this Court that  
6 he intends in good faith to remain and that he will remain within  
7 the jurisdiction of this Court at all times throughout the pro-  
8 ceedings of the proceedings under the indictment and that he does  
9 not intend to and will not at any time during such proceedings  
10 leave the jurisdiction of this Court without the approval of the  
11 Court. Petitioner believes that he is not guilty of the offense  
12 charged in the indictment and he intends to vigorously prosecute  
13 his defense. Petitioner believes that upon the trial of this in-  
14 dictment herein, he will be entitled to a verdict of not guilty  
15 and that a conviction upon the allegations thereof would deprive  
16 him of liberties secured to him by the Constitution of the United  
17 States.



which 1  
2 In order to properly prepare petitioner's defense with the  
3 aid of counsel, it is vital that petitioner be released on reason-  
4 able bail. An order was entered by the aforesaid Judge William C.  
that 5 Mathes on August 31, 1951 directing the conditions under which  
within 6 petitioner and the co-defendants could prepare for trial. A copy  
proce- 7 of the aforesaid Order is annexed hereto and marked Exhibit "C."  
does 8 The provisions made in the said Order for the conditions under  
ing 9 which the petitioner and the co-defendants may prepare for trial  
of the 10 remain inadequate, and under the circumstances hereinafter set  
ffense 11 forth will place onerous burdens upon the petitioner in the prep-  
secute 12 aration of the defense to the charges contained in the indictment.  
his 13 The petitioner avers that unless petitioner is released on reason-  
will 14 able bail, petitioner will be deprived of a fair trial without due  
eprive 15 process of law.

United 16  
17 Under the aforesaid Order the petitioner is permitted to work  
18 with counsel on the preparation of the case on Mondays through  
19 Fridays only between the hours of 9 A.M. and 5 P.M. These limita-  
20 tions upon the hours of work disregard the scope and nature of the  
21 preparation which must be made in the case herein and which, if a  
22 proper defense is to be made, requires fulltime preparation, es-  
23 pecially in the evenings and on weekends. In addition, the peti-  
24 tioner must prepare, under the said Order, with co-defendants and  
25 counsel in a room in the Federal Building or at such place as the  
26 respondent shall select; while working in said designated room,  
27 petitioner is required to bring in meals at petitioner's own ex-  
28 pense; bring in books, documents and other materials without cen-  
29 sorship as to content only; and allowed to consult with witness  
30 provided that each witness shall furnish to respondent his name,  
31 address, crime record, if any, and general occupation.

XXXI

1. For the purpose of adequately preparing for their defense  
2. herein it will be necessary for the defendants including petition-  
3. er to examine and study each of the exhibits offered by the Gov-  
4. ernment in the case of United States v. Dennis and each of the ex-  
5. hibits offered by the defendants in said case, for the reason that  
6. the indictment herein charges that each of the defendants herein  
7. are parties to the same alleged conspiracy which was the basis of  
8. the charge against the defendants in the said case of United States  
9. v. Dennis.

XXXII

12. In the said case of United States v. Dennis the Government  
13. offered at the trial 234 exhibits of which number approximately  
14. 200 were admitted in evidence. The said exhibits included por-  
15. tions of books such as the "English Version, Seventh World Cong-  
16. ress, Communist International, Volume 15" with more than 850 pages,  
17. excerpts from numerous editions of the Daily Worker and excerpts  
18. from numerous other pamphlets and documents published over a per-  
19. iod of many years. For example, the first twenty Government ex-  
20. hibits out of the total of 234 offered were:

21. 1. Photostatic copy of an article from "Daily Worker" of  
22. October 2, 1935.
23. 2. Pages 361 and 862 of book entitled "English Version.  
24. Seventh World Congress. Communist International 8/8/35"--  
25. Vol. 15.
26. 3. Excerpts from booklet entitled "Program of the Commun-  
27. ist International." (These excerpts ran from page 14473 to  
28. page 14520 in the Joint Appendix of the said case of United  
29. States v. Dennis.)
30. 4. Excerpts from Manual entitled "Manual of Organization"  
31. by J. Peters. (These excerpts ran from page 14521 to 14536  
32. in the said Joint Appendix.)



5.. Excerpts from Manual entitled "Why Communism?" by M. J. Olgin. (These excerpts ran from page 14537 to 14555 in the said Joint Appendix.)

6.. Book entitled "Foundations of Leninism," by Joseph Stalin. (The entire book consisting of 123 printed pages was admitted in evidence.)

7. Article "Strengthen National Unity," by Earl Browder, from "The Worker," dated 1/16/44, Mag. Sec., pages 7-12.

8. Booklet entitled "The Communist," dated Feb., 1944.

8-A. Pages 107 and 108 of booklet entitled "The Communist" of Feb., 1944.

9. Pamphlet entitled "The Path to Peace; Progress and Prosperity" - May 20-22, 1944.

10. Page 10 of New York Times - 5/7/45.

11. Page 1 of New York World Telegram - 5/22/45.

12. Photostat of "Daily Worker" of 5/24/45.

12-A. Article, "On the Dissolution of the Communist Party of the United States of America," by Jacques Duclos, from pages 7, 8 and 9 of "Daily Worker" of 5/24/45. (This article ran from page 14557 to 14580 in the said Joint Appendix.)

13. Photostat of "Daily Worker" of June 4, 1945.

13-A. Article "The Present Situation and Next Tasks" Resolution of National Board Communist Political Association adopted June 2, 1945, from pages 4 and 5 of "Daily Worker" of June 4, 1945. (This article ran from page 14581 to page 14594 in the said Joint Appendix.)

14. Photostat of "Daily Worker" of June 10, 1945.

14-A. Article "On Revisionism in the C.P.A." from pages 7 and 8 of "Daily Worker" of June 10, 1945. (This article ran from page 14594 to 14601 in the said Joint Appendix.)

15. Photostat of "Daily Worker" of June 16, 1945.

1 15-A. Article "Thompson Discusses Browder's Program" by  
2 Bob Thompson, page 7 of "Daily Worker" of June 16, 1945.

3 16. A letter.

4 17. Booklet entitled "Political Affairs," dated July, 1945,  
5 and excerpts from said booklet as indicated. (These ex-  
6 cerpts ran from page 14608 to page 14652 in the said Joint  
7 Appendix.)

8 18. Photostat of "Daily Worker" of June 22, 1945.

9 18-A. Article "CPA National Committee backs Resolution,  
10 Calls Convention," page 2 of "Daily Worker" of June 22,  
11 1945.

12 19. Photostat of "Daily Worker" of 6/23/45.

13 19-A. Article "Call CPA Convention July 26" from page 3  
14 of "Daily Worker" of 6/23/45.

15 20. Photostat of "The Worker" of 6/24/45.

16 20-A. Article "Says Leadership Can't Shirk Responsibili-  
17 ties for Errors," by John Williamson, from page 8 of "The  
18 Worker" of 6/24/45.

19 The defense in that case offered 346 exhibits of which 93  
20 were admitted in evidence. The said exhibits were similar in  
21 source and length to those offered by the prosecution.

22 X X X H I

23 In order to adequately prepare for the defense it will be  
24 necessary for the defendants including petitioner to examine each  
25 of the aforesaid exhibits in their entirety in order to ascertain  
26 whether portions of the exhibits not offered or received in evi-  
27 dence may be used to rebut the inferences which the Government  
28 will ask the jury to draw from the portions of the exhibits which  
29 it offers. In addition, it will be necessary for the defendants  
30 to examine numerous other books, pamphlets and newspapers in order  
31 to determine what related material is available to them for the  
32 purposes mentioned above.

13



XXXIV

1  
2 Many of the books, documents and pamphlets are, so far as de-  
3 fendants know, not readily available at any one place and it will  
4 be necessary for defendants to examine the bibliographies of vari-  
5 ous libraries such as the Los Angeles Public Library, the Univer-  
6 sity of California Library at Los Angeles, the Huntington Library,  
7 and others, and to visit various book stores to determine what  
8 books and pamphlets they have available, to examine their own  
9 files, records and libraries, as well as to seek to find other  
10 persons who may have some of said books, pamphlets or documents  
11 available.

XXXV

12  
13 The defendants including petitioner have been advised by  
14 their counsel that it will be impossible for their counsel to un-  
15 dertake the responsibility for this work and that if preparation  
16 is to be made with respect to the various documents which may be  
17 offered on behalf of the Government and which should be offered on  
18 behalf of the defense, it will be necessary for the defendants  
19 themselves to secure such documents to become thoroughly familiar  
20 with them, to analyze them and to present their analysis to their  
21 said counsel.

XXXVI

22  
23 In addition to the books, records and documents offered by  
24 both sides in the case of United States v. Dennis, it will be ne-  
25 cessary for the defendants including petitioner to examine numer-  
26 ous publications, pamphlets and similar documents which were is-  
27 sued on the West Coast which it will be necessary for the defen-  
28 dants to secure from the various sources enumerated above in order  
29 to prepare to meet evidence which the Government may offer with  
30 respect to the ideas and beliefs and the speech and writings of  
31 these defendants, and in order to present their own defense with  
32 respect to such ideas, beliefs, speech and writings.

XXX VIII

It will be absolutely impossible for the defendants to prepare their defense unless they are in a position to visit their various homes and offices, the libraries mentioned above, book stores, the homes of persons who may have material available, and other places where they may discover that some of the material needed is available.

XXX VIII

In addition, they will require the opportunity frequently to consult privately and confidentially with their counsel, both individually and in groups. They will also require assistance from research persons, secretaries and other persons with whom they must consult frequently and regularly in order to undertake even the beginnings of the vast job of preparation which confronts them.

XXX IX

The tremendous task of preparation would present many problems even if the defendants were free on bail. The indictment in this case being based on the alleged ideas and beliefs allegedly held by the defendants as well as the ideas and beliefs allegedly contained in books, documents, newspapers and other writings presents a unique problem from the standpoint of preparation for trial. There is involved in this case the fundamental principles of Marxism-Leninism, a world view of nature and society first developed by Marx and Engels over 100 years ago and having its origin in much of the prior thought of mankind especially British classical political economy, French materialism and German classical idealism, especially that of Hegel. Marxism was added to and extended and further developed over the period of a century on the basis of new conditions and new experiences throughout the world. Leninism is a further development of Marxism in the period referred to by Lenin as the epoch of imperialism.



XL

As a comprehensive world view, Marxism-Leninism embraces all aspects of nature and society. It consequently deals with innumerable teachings, doctrines, laws, concepts, theories and tendencies in such spheres as history, philosophy, political economy, sociology, etc.

XL1

The principles of Marxism and Leninism, their development and their application in concrete situations, are not contained in any single text or compendia but are contained in the writings of many Marxist scholars and philosophers published over many years and in many countries. The defendants in this case must prepare to defend themselves against the charge that they have conspired to advocate matters which may appear in any one of the thousands upon thousands of publications upon which the Government might rely. In addition, they must be prepared to present their own views in respect to these innumerable documents. Never before the Dennis case has any court of law sought to try such a body of doctrine and thinking. In this type of trial, a trial of books and ideas, only the most intensive and concentrated work will permit even the minimum amount of preparation necessary for the defendants to present a defense.

XL11

The indictment herein charges that as a part of the alleged conspiracy petitioner and the other persons named in the indictment, and divers unnamed persons, would write and cause to be written articles and directives in publications of the Communist Party of the United States of America, including but not limited to "Political Affairs," "Daily People's World," "Daily Worker" and "The Worker."

XL111

With respect to the said Daily People's World, as alleged in

the petition of Philip Marshall Connelly, this newspaper was published last year Monday through Friday of each week and prior to that time and for a number of years prior to April 1, 1945, said newspaper was published Monday through Saturday of each week. In order, therefore, just to examine and analyze the issues of the said paper commencing April 1, 1945 (the date when the alleged conspiracy herein was begun) it would be necessary to examine 1,770 issues of not less than four pages and as many as eight to ten pages of conventional size or tabloid size newspaper. The other publications named in the indictment herein are, on information and belief, of considerable volume probably exceeding in size that of the Daily People's World as aforesaid.

XLIV

In order to properly prepare the defense herein as above outlined, there is need for petitioner's freedom on reasonable bail so that petitioner can earn his livelihood and obtain the necessary funds required in a legal defense of the scope hereinabove stated. Petitioner cannot properly prepare a defense while petitioner and petitioner's witnesses are subject to surveillance and confinement in a room, where petitioner is unable to earn a livelihood and where the time for consultation among counsel, witnesses and petitioner is severely limited.

XLV

In view of the facts and circumstances hereinabove set forth, petitioner respectfully submits to the Court that petitioner is at the present time unlawfully imprisoned and restrained of petitioner's liberty; that petitioner's imprisonment and detention are illegal, arbitrary and a denial of rights secured to petitioner by the Constitution of the United States and that bail in the sum of \$50,000 is so excessive and so unreasonable as to constitute an absolute denial of petitioner's right to bail and petitioner's right as a matter of due process of law to properly defend peti-

17



1 tioner against the charges which have been brought against peti-  
2 tioner.

3 XLVI

4 That no previous application for a writ of habeas corpus has  
5 been made in this matter to any other court except as hereinabove  
6 alleged.

7 WHEREFORE, petitioner prays that a writ of habeas corpus may  
8 issue directed to James J. Boyle, United States Marshal, Southern  
9 District of California, Central Division, and to any other offi-  
10 cers having custody of the body of your petitioner, commanding him  
11 to have the body of your petitioner produced before this Court at  
12 a time and place to be specified, to do and receive what shall  
13 then and there be considered concerning your petitioner together  
14 with time and cause of petitioner's detention and said writ; and  
15 that this honorable Court order and direct that petitioner be re-  
16 leased from such custody forthwith upon such reasonable bail as  
17 may be determined in the premises.

18 DATED: This 4th day of September, 1951.

19  
20 (Verified Sept. 4, 1951)

21 /s/ Ernest Otto Fax  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

EXHIBIT A

The Pending Register of Federal Criminal Actions in the Central District was examined. Approximately 186 cases were bail cases. The only cases where bail was fixed at \$10,000 or more is the annexed list. Many of these annexed indictments contained more than one count.

CHARGE

PENALTY

BAIL

Mail fraud and conspiracy	5 years - \$10,000 (5 counts)	\$25,000
Failure to self-deport)	10 years	25,000
Failure to self-deport)	10 years	15,000
Concealing assets in bank .	5 years - \$5,000	15,000
Transmission of threatening letters	5 years - \$1,000	15,000
Transmission of threatening letters	5 years - \$1,000	10,000
Perjury	5 years - \$2,000	10,000
Evasion of Income Tax	5 years - \$10,000	10,000
Firearms in Interstate Commerce	5 years - \$2,000	10,000
Robbery of United States Mail	10 years	10,000
Conspiracy to defraud Govt.	10 years - \$10,000	10,000 re-duced to 5,000
Concealing assets	5 years - \$5,000	10,000

Smith Act Prosecutions in New York

(1) Dennis v. U. S. - 12 defendants

\$5,000 after indictment. After conviction - \$20,000 each - fixed by Circuit Court. Bail continued by Jackson, J., pending applications for writ (Williamson v. U. S., 95 L.Ed. Adv. 10)

1. (2) U. S. v. Flynn, et al

2 Flynn, Perry, Gerson, Bachrach, Weinstock, Lannon,  
3 Jerome, Weinstone, Charney, Begun, Johnson.  
4 \$10,000 - Increase to \$50,000 sought, denied.  
5 Jones, Gannet, and Bittelman - \$20,000 - In-  
6 crease to \$75,000 sought, denied. Mindel -  
7 \$5,000 - Increase to \$50,000 sought, denied.  
8 Amter - \$1,000 - no increase sought.

9 (3) Hawaii-U.S. v. Hall, et al

10 Bail fixed by Commissioner for 7 defendants at  
11 \$75,000. Reduced by Judge Delbert E. Metzger  
12 to \$5,000. After indictment, bail fixed at  
13 \$7,500.

14 (4) Pittsburgh-West Virginia-U.S. v. Nelson, et al

15 Bail fixed by Commissioner in sum of \$100,000.  
16 Reduced by Judge William Kirkpatrick in Phila-  
17 delphia to \$20,000.

18 (5) Baltimore-U.S. v. Frankfeld

19 Bail fixed by Commissioner at \$75,000. Reduced  
20 for one defendant to \$5,000; second defendant  
21 to \$17,500; third defendant to \$10,000.

22 Terminal Island Four

23 (Carlson v. U.S.)

24 Charge - Alien Communists and advocates of force  
25 and violence. Pending deportation proceedings,  
26 bail denied by Attorney General, District Court  
27 and Circuit Court. On application for writ of  
28 certiorari, bail in sum of \$5,000 unanimously  
29 fixed by United States Supreme Court sitting  
30 as entire body.

32 EXHIBIT A



EXHIBIT B

ANALYSIS

Of the approximately 186 cases examined July 30, 1951 (total in the Pending Register), about 175 fixed bail at less than \$10,000. The following is a tabulation:

<u>Bail</u>	<u>No. of Cases</u>
\$7,500	2
5,000	20
3,500	1
3,000	6
2,500	18
2,000	14
1,500	18
1,000	47
500	22
250	1
Own Recognizance	22

The cases where the penalty was 5 years and up totalled approximately 153 in number, or about 30% of the total number of cases. The average bail in all of the cases where the penalty was 5 years and up amounts to less than \$3,000.

1 The following are the cases in the Pending Register of Criminal  
2 Actions in Central District where the bail was below \$10,000:

3 <u>CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
4 Forgery	10- \$1,000	3	\$ 1,000
5 Passing altered money order	5- 5,000	2	2,000
6 Forging and uttering U. S.			
7 Treasury check	10- 1,000	2	1,000
8 Forging and uttering check	5- 1,000	2	Own Recognizance
9 Forging and uttering check	5- 1,000	2	500
10 Forging and uttering			
11 Government obligation	5- 1,000	2	1,000
12 Harboring and concealing			
13 aliens	5- 1,000	1	1,500
14 Possession and sale of			
15 narcotics	10- 5,000	2	500
16 Illegal wearing uniform,			
17 U.S. Army	6mos 250	1	500
18 Unlawful wearing U.S.			
19 Navy Uniform	6 mos 250	3	500
20 Forging and uttering			
21 Government draft	10- 1,000	2	1,000
22 Unlawful possession of			
23 ration point	1-10,000	1	5,000
24 Forgery, personation and			
25 Conspiracy	10-10,000	4	3,000
26 Forgery, personations and			
27 Conspiracy	10-10,000	4	2,000
28 Conspiracy, possession of			
29 writings and sugar stamps	5-10,000	5	5,000
30 Conspiracy, possession of			
31 writings and sugar stamps	5-10,000	5	Own Recognizance

1	<u>CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
2	Buying and selling meat			
3	in excess of price			
4	control	5-\$10,000	5	\$ 5,000
5	Concealment of assets			
6	from trustee in			
7	bankruptcy	5- 5,000	3	10,000
8	Attempt to wreck a train	5- 5,000	1	5,000
9	Mailing scurrilous postal			
10	cards	5- 5,000	5	500
11	False claim of citizen-			
12	ship	5 10,000	1	2,500
13	Internal Revenue Code:			
14	(Fraudulent income			
15	tax return)	5-10,000	4	
16	Failure to report for			
17	induction and to keep			
18	Board informed of			
19	address	5-10,000	2	2,500
20	Treason	death		No Bail
21	Transport stolen motor			
22	vehicle	5- 5,000	1	5,000
23	False claim of citizen-			
24	ship	5-10,000	1	500
25	Conspiracy and fraud			
26	vs. Government	5-10,000	24	10,000*
27				(on motion reduced to 5,000)
28	Mann Act	5- 5,000	1	1,000
29	Servicemen's Readjustment			
30	Act #44	1- 1,000	4	Own Recogni- zance
31	Transport stolen motor			
32	vehicle	5- 5,000	1	
	* Referred to in Exhibit A			



1. <u>CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
2 Juvenile Delinquency			
3 Forgery U.S. Money Order)		1	
4 Mailing obscene letter	10- 5,000	1	\$ 2,500
5 Engage in business of			
6 purchasing spirits for			
7 resale without basic			
8 permit		2	2,500
9 Transport stolen motor			
10 vehicle	5- 5,000	1	
11 Forging and cashing			
12 Government bonds	10- 1,000	2	2,500
13 Theft of mail	5- 2,000	1	1,000
14 Forging Government			
15 Obligation	15- 5,000	1	500
16 Bank robbery, transport-			
17 ing interstate stolen			
18 money and flight to			
19 avoid prosecution	25-10,000	3	Held No Bond
20 Forging and uttering			
21 Government check	10- 1,000	2	1,000
22 Transporting stolen motor			
23 vehicle in foreign			
24 commerce	5- 5,000	1	3,000
25			(reduced to 2,000)
26 Anti-trust conspiracy to			
27 fix, determine, establish			
28 and maintain noncompetitive			
29 prices, etc. of fire			
30 extinguishers	1- 5,000	1	Own Recogni- zance (later 1,000)
31			
32			

1	<u>CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
2	Theft of Government			
3	property, forging			
4	and uttering Govern-			
5	ment checks	10- \$ 10,000	4	\$ 2,500
6	Sale and possession of			
7	narcotics	10- 5,000	2	2,500
8	Conspiracy, false state-			
9	ments to Government	5- 10,000	2	3,000
10	Purchase of narcotics,			
11	receiving and trans-			
12	porting narcotics	10- 5,000	2	2,500
13	Forging postal money			
14	order	5- 5,000	4	500
15	False statement in appli-			
16	cation for Survivors			
17	Insurance Benefits	1- 1,000	12	1,000
18	Evasion of Income Tax	5- 10,000	1	1,000
19	Migratory	6 mos 500	1	
20	Embezzlement, abstraction,			
21	misapplication funds			
22	H.O.L.C., and false			
23	entry in book	5- 10,000	24	Own Recogni- zance (late 5,000)
24				
25	Evasion income taxes	5- 10,000	2	1,000
26				Released Own Recognizance on Motion
27	Evasion income taxes	5- 10,000	1	1,000
28	Misapplication and			
29	Embezzlement of National			
30	bank funds	5- 5,000	6	1,000
31	Evasion income taxes	5- 10,000	2	2,000
32				

1 <u>CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
2 Evasion income taxes	5- \$10,000	2	Own Recongi- zance
3 Failure to file in- come tax return	1- 10,000	1	\$ 2,500 Released own recognizance
4			
5			
6 Forging and uttering			
7 government checks	10- 1,000	2	1,000
8 Transporting stolen			
9 car	5- 5,000	1	1,000
10 Transmission Inter-			
11 state threatening			
12 communications;			
13 mailing threatening			
14 letters	20- 5,000	4	15,000*
15 Sale of narcotics	10- 5,000	2	1,500
16 False statement in			
17 application for			
18 Federal Housing			
19 Loan		4	400
20 Conspiracy to defraud, make,			
21 pass, utter and pub-			
22 lish statements re:			
23 FHA Title Loan application	5- 10,000	41	2,000
24 Conspiracy to defraud, make			
25 pass, utter pub-			
26 lish statements re:			
27 FHA Title Loan			
28 Application	5- 10,000	41	1,000
29 Perjury before ICC, making			
30 false statements on oath			
31 before examiner	5- 2,000	1	1,500
32 * Referred to in Exhibit A			



1 <u>CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
2 Anti-trust, fixing			
3 prices for fish	1- \$ 5,000	2	\$ 1,000
4 Perjury; false state-			
5 ments to and con-			
6 cealing facts from			
7 Department of Army	5- 2,000	6	Own Recogni-
8 Official asking and			zance
9 accepting bribe	3-	14	1,000
10 Embezzlement and theft			
11 of U.S. property			
12 False documents			
13 Filed with Department			
14 of Agriculture	5- 10,000	28	Own Recogni-
15			zance then
16 Contempt, failure to			3,500.
17 appear before Grand			
18 Jury		1	1,000
19 Forging U.S.			
20 Treasury Checks	10- 1,000	8	1,000
21 Concealment of narcotics	10- 5,000	1	2,000
22 Perjury committed before			
23 Federal Grand Jury	5- 2,000	1	5,000
24 Mail fraud and Conspiracy	5- 10,000	5	25,000*
25 Mail fraud and Conspiracy	5- 10,000	5	500
26			(vacated and
27			released on
28 Accessory to bank robbery			own recogni-
29 and receiving proceeds			zance)
30 thereof	12- 5,000	2	5,000
31 *Referred to in Exhibit A			
32			

1	<u>CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
2	Conspiracy to commit			
3	offenses in vio-			
4	lation of Title			
5	47, Sec. 605;			
6	(Unauthorized			
7	publication or use			
8	of communications)	5-\$10,000	1	\$ 7,500
9	Conspiracy to commit			
10	offenses in vio-			
11	lation of Title 47;			
12	Sec. 605; (Unauth-			
13	orized publication			
14	or use of communi-			
15	cations)	5- 10,000	1	1,000
16	Evasion of income tax	5- 10,000	3	1,500
17	Evasion of income tax	5- 10,000	2	1,500
18	Transport interstate			
19	of stolen auto	5- 5,000	1	3,000
20	Evasion of income tax	5- 10,000	1	1,000
21	Transport forged			
22	security			
23	interstate	10, 10,000	1	2,000
24	Mailing obscene			
25	matter	10- 5,000	13	2,000
26	Illegal impor-			
27	tation and			
28	concealment of			
29	narcotics	10- 5,000	2	2,500
30	Embezzlement and			
31	theft of U.S property	10- 10,000	20	Own Recogni- zance
32				

<u>1 CHARGE</u>	<u>PENALTY</u>	<u>COUNT</u>	<u>BAIL</u>
2 Concealing assets and con-			
3 cealing records in con-			
4 tempt of Bankruptcy;			
5 Conspiracy; mail fraud	5- \$ 10,000	6	\$ 5,000
6 Misbranded device and drug			
7 in interstate commerce	1- 1,000	1	own recogni-
8 False claim of citizenship	5- 10,000	2	zance
9 Evasion income tax	5- 10,000	2	7,500
10 Transport stolen motor vehicle	5- 5,000	1	1,500
11 Ship misbranded drug in			3,000
12 interstate commerce	1- 1,000	2	Own recogni-
13 Mail fraud	5- 1,000	17	zance
14 Robbery from mails	5- 10,000	1	2,500
15 Evasion income tax	5- 10,000	4	10,000*
16 Evasion income tax	5- 10,000	2	1,500
17 Evasion income tax	5- 10,000	2	1,500
18 Evasion income tax	5- 10,000	4	1,500
19 Evasion income tax	5- 10,000	4	1,500
20 Evasion income tax	5- 10,000	4	1,500
21 Conspiracy to commit offens-			
22 es against U.S.; conspiracy			
23 to cause to be made false			
24 papers re: Veterans Eligi-			
25 bility for Home Loans under			
26 Servicemen's Readj. Act, 1944	5- 10,000	9	1,000
27 Evasion income tax	5- 10,000	4	1,500
28 Failure to register firearm;			
29 Interstate transport. unreg-			
30 istered Firearm	5- 2,000	2	10,000*
31 Interstate transport motor			
32 vehicle stolen	5- 5,000	1	2,000

\*Referred to in Exhibit A



<u>1</u>	<u>CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
2	Illegal sale of			
3	narcotics.	5 - \$2,000	5	2,500
4	IRC - evasion of			
5	income tax;			
6	Making false statements			
7	(Mickey Cohen case)	5 - 10,000	5	10,000* (reduced to 5,000)
8				
9	IRC - evasion of			
10	income tax;			
11	Making false			
12	statements (Mickey			
13	Cohen case - wife)	5 - 10,000	1	2,500
14	Theft of mail,			
15	obstruction of			
16	correspondence	5 - 2,000	1	1,000
17	Transport stolen car	5 - 5,000	1	1,000
18	Theft of mail by			
19	postal employee	5 - 2,000	1	1,000
20	Failure to report for			
21	induction	5 - 10,000	1	5,000
22	Perjury committed before			
23	Grand Jury	5 - 2,000	2	10,000*
24	Obstruction of			
25	correspondence	5 - 500	1	2,000
26	Transport stolen auto	5 - 5,000	1	5,000
27	Failure to report for			
28	induction	5 - 10,000	1	2,500
29	Failure to file			
30	Questionnaire	5 - 1,000	2	2,500
31	* Referred to in	-		
32	Exhibit A			

EXHIBIT "B"

<u>1</u>	<u>CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
2	Soliciting and attempt-			
3	ing to sell auto in			
4	excess of maximum			
5	ceiling price		4	500
6	Concealment of assets			
7	and records in bank-			
8	ruptcy; conspiracy,			
9	mail fraud	5 - 10,000	3	Own Recognizance
10	Failed and refused to			
11	be inducted	5 - 10,000	1	2,500
12	Illegal possession of			
13	Marijuana	5 - 2,000	1	1,500
14	Conspiracy to corruptly			
15	endeavor to influence			
16	a witness and solici-			
17	tation of a bribe by			
18	such witness	5 - 10,000	1	Own Recognizance
19	Failure to register			
20	firearm	5 - 2,000	1	1,000
21	Failure to register			
22	firearm	5 - 2,000	1	1,000
23	Servicemen's Readj.			
24	Act 1944	1 - 1,000	3	500
25	Transport Stolen Auto	5 - 5,000	1	1,000
26	Failure to report for			
27	induction	5 - 10,000	1	5,000
28				(reduced to 1,000)
29	Theft of mail by			
30	postal employee	5 - 2,000	4	1,000
31	Theft of mail by			
32	postal employee	5 - 2,000	3	1,500

EXHIBIT "B"

1	<u>CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
2	Transport stolen car	5 - \$5,000	1	\$2,000
3	Transport stolen car	5 - 5,000	1	5,000
4	Transport stolen car	5 - 5,000	1	1,000 ✓
5	Breaking into building			
6	used in part as			
7	Post Office	5 - 1,000	1	5,000
8	Mail fraud	5 - 1,000	11	5,000
9	Conspiracy; embezzle-			
10	ment funds National			
11	Bank	5 - 10,000	4	1,000
12	Theft from interstate			
13	shipment and re-			
14	ceiving stolen goods	10 - 5,000	12	5,000
15	Forging of postal			
16	saving certificates			
17	and uttering same	5 - 5,000	8	500
18	Failure to report for			
19	induction	5 - 10,000	1	1,500
20	Failure to report for			
21	induction	5 - 10,000	1	1,000
22	Theft of mail	5 - 2,000	1	1,000
23	Mail threatening			
24	letter	20 - 5,000	1	10,000*
25	Illegal possession of			
26	Marijuana	5 - 2,000	1	1,000
27	Fair Labor Standards Act	6 mos-10,000	14	Own Recognizance
28	Fair Labor Standards Act	6 mos-10,000	13	Own Recognizance
29	Fair Labor Standards Act	6 mos-10,000	10	Own Recognizance
30	Federal Food, Drug and			
31	Cosmetics Act (Adul-			
32	terated food in Int.Com.)	1 - 1,000	18	Own Recognizance

\* Referred to  
in Exhibit A



1	<u>CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
2	Federal Food, Drug and			
3	Cosmetics Act (Adul-			
4	terated food in in-			
5	terstate commerce)	1 - 1,000	4	Own Recognizance
6	Forging Government Check	10 - 1,000	2	5,000
7	Obstruction of mail	5 - 2,000	2	5,000
8	Theft from interstate			
9	shipment	10 - 5,000	3	1,000
10	Theft on Government			
11	Reservation	5 - 5,000	2	500
12	Illegal wearing			
13	uniforms	6 - 250	1	1,000
14	Infringement of copy-			
15	righted movies	1 - 1,000	4	Own Recognizance
16	False claim for unem-			
17	ployment insurance			
18	benefits from R.R.			
19	retirement board	1 - 10,000	4	Own Recognizance
20	Transport stolen fire-			
21	arm	5 - 2,000	1	2,000
22	Failure to be inducted	5 - 10,000	1	1,000
23	Failure to be inducted	5 - 10,000	1	3,000
24	Forging and uttering			
25	Government check	10 - 1,000	2	1,000
26	Theft of mail	5 - 2,000	3	1,000
27	Theft of mail by			
28	postal employee	5 - 2,000	2	500
29	Theft of mail by			
30	postal employee	5 - 2,000	2	500
31	Theft of mail by			
32	postal employee	5 - 2,000	2	1,000

EXHIBIT "B"

1	<u>CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
2	Failure to be inducted	.5 - \$10,000	1	\$1,000
3	Embezzlement of funds			
4	National Bank	5 - 5,000	4	1,000
5	Forging and uttering			
6	forged Postal			
7	Money Order	5 - 5,000	2	250
8	Forging Government Check	10 - 1,000	3	1,500
9	Failure to register			
10	firearm	5 - 2,000	1	1,000
11	Causing false claim to			
12	be made to Veterans'			
13	Administration re:			
14	Appraisal	1 - 1,000	1	Own recognizance
15	False claim for unemploy-			
16	ment insurance benefits			
17	R.R. retirement board	1 - 10,000	2	Own recognizance then 500
18				
19	False claim for unemploy-			
20	ment insurance R.R. retire-			
21	ment board	1 - 10,000	4	Own Recognizance then 500
22				
23	Juvenile delinquency			
24	transfer of marijuana		1	500
25	Illegal sale of marijuana	5 - 2,000	2	2,500
26	Forging and uttering			
27	Government check	10 - 1,000	2	1,000
28	Embezzlement of funds			
29	of National Bank	5 - 500	4	Own recognizance
30				
31				
32				

<u>1</u>	<u>CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
2	Interstate transport			
3	falsely made			
4	security	10 - \$10,000	1	2,500
5	False claim unemploy-			
6	ment insurance bene-			
7	fits R.R. retirement			
8	board	1 - 10,000	4	Own Recognizance then 500
9	Impersonation as			
10	Federal Officer	3 - 1,000	4	5,000
11	Theft of mail by			
12	postal employee	5 - 2,000	2	500
13	Illegal wearing Marine			
14	Corps uniform	6 mos.-500	1	500
15	False claim of citi-			
16	zenship	3 - 1,000	1	1,000
17	Theft of mail by			
18	Postal employee	5 - 2,000	2	500
19	Illegal sale and			
20	Possession of			
21	marijuana	5 - 2,000	2	2,000
22	Theft of mail by			
23	Postal employee	5 - 2,000	2	3,000
24	Theft of Government			
25	property	10 - 10,000	4	1,000
26	Illegal possession			
27	of Marijuana	5 - 2,000	1	1,000
28	Conspiracy to de-			
29	fraud and commit			
30	offense - kick -			
31	backs on sub-			
32	contracts	2 - 10,000	9	2,500

EXHIBIT "B"



EXHIBIT "C"

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

UNITED STATES OF AMERICA,

No. 21883-Crim.

Plaintiff,

vs.

O R D E R

WILLIAM SCHNEIDERMAN, et al.,

Defendants.

Pursuant to stipulation of the parties hereto, the United States Marshal IS HEREBY ORDERED AND DIRECTED to take the steps necessary to permit each and all of the defendants in the above-entitled matter to have the following conditions for preparation for trial:

1. Upon one days notice, or upon being furnished a schedule in advance, the said defendants shall be permitted to work with their attorneys on the preparation of their case at any and all times between the hours of 9:00 a.m. to 5:00 p.m., Mondays through Fridays, inclusive, in Room 243B of the Federal Building in the city of Los Angeles, or at such place as the United States Marshall shall select. An attorney for said defendants need not be present at all times during the time that the defendants are so working on the preparation of their case for trial.

2. During the time that the defendants are so working

1 they may have brought to them their meals at their own expense.

2 3. The defendants shall be allowed to bring into said  
3 room and to maintain there such books, documents, pamphlets,  
4 and similar written or printed material as they shall desire,  
5 without censorship of any kind as to content, and the defendants  
6 shall be permitted to make and keep in said room and to deliver  
7 to their attorneys such notes, memoranda and documents as they  
8 desire, without censorship of any kind as to content. In  
9 addition, the defendants shall be permitted to bring to said  
10 room and keep there such office equipment as typewriters, and  
11 such office supplies as paper, carbon paper, pencils, pens, ink,  
12 etc.; provided, however, that none of the foregoing is intended  
13 to deprive the United States Marshal of the right to see to it  
14 that nothing other than materials of the kind permitted by this  
15 order are brought in.

16 4. For the purpose of dealing with problems relating  
17 to their defense, the defendants shall be allowed, in the  
18 presence of an attorney, to visit and confer with such persons  
19 as the attorney shall designate; provided, however, that such  
20 person shall furnish to the United States Marshal his name,  
21 address, criminal record if any, and general occupation.

22  
23 DATED this 31st day of August, 1951.

24  
25  
26  
27 United States District Judge

28  
29 PRESENTED BY:

30  
31 WALTER S. BINNS  
32 Chief Assistant U. S. Attorney

1 MARGOLIS and McTERNAN  
112 West Ninth Street  
2 Los Angeles 15, California  
Vandike 7153

3 and  
4 LEO A. SULLIVAN  
1440 Broadway Street  
Oakland, California  
5 Hightower 4-1707

6 Attorneys for Petitioner

7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
10 CENTRAL DIVISION

11 **ERNEST OTTO FOX,**

12 Petitioner,

13 vs.

14 JAMES J. BOYLE, United States Marshal,  
15 Respondent.

No. 13440-PH

ORDER TO SHOW CAUSE WHY  
WRIT OF HABEAS CORPUS  
SHOULD NOT ISSUE

16 Upon reading the verified petition of the petitioner on  
17 file herein,

18 IT IS HEREBY ORDERED that James J. Boyle, United States Marsh  
19 for the Southern District of California appear before the above  
20 entitled Court in the courtroom of the Honorable  
21 at the United States Post Office and Court House Building, 312 North  
22 Spring Street, Los Angeles, California, on the 6th Day of September  
23 1951, at 2 P.M. of said day, then and there to show cause if any he  
24 may have why he should not release from his custody or the custody  
25 such officers or agents as may have the same for and on his behalf,  
26 the body of **ERNEST OTTO FOX**, petitioner herein, upon  
27 such reasonable bail as may be determined by this Court.

28 Good cause being shown therefor, it is hereby ordered that  
29 this Order and the said petition may be served upon the respondent  
30 herein on or before September 4, 1951 at 2 P.M. of said day.

31 DATED: This 4th day of September, 1951.

32 /s/ Ben Harrison

JUDGE OF THE U.S. DISTRICT COURT



1 ERNEST A. TOLIN  
United States Attorney  
2 RAY H. KINNISON  
Assistant U. S. Attorney  
3 Chief of Criminal Division  
4 600 Federal Building  
Los Angeles 12, California  
5 Telephone: MADison 7411  
6 Attorneys for Respondent

7 IN THE UNITED STATES DISTRICT COURT  
8 IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
9 CENTRAL DIVISION

10  
11 ~~ERNEST OTTO FOX,~~

12 Petitioner,

13 vs.

14 JAMES J. BOYLE, United  
States Marshal;

15  
16 Respondent.

NO. 13440-PH

RETURN TO WRIT OF HABEAS CORPUS

17 I, JAMES J. BOYLE, United States Marshal for the Southern District of  
18 California, respondent herein, on behalf of myself and each and all of my agents  
19 and deputies, respectfully make the following return and answer to this Honorable  
20 Court, to the writ of habeas corpus issued pursuant to the petition for writ of  
21 habeas corpus in the above case:

22 I

23 That the petitioner, Ernest Otto Fox, is not unlawfully  
24 imprisoned or restrained of his liberty, and his imprisonment and detention  
25 are not illegal, arbitrary or a denial of rights secured to him by the Constitu-  
26 tion of the United States, but said petitioner is in my custody under proper  
27 lawful authority.

28 II

29 That said petitioner was taken into custody on July 26, 1951, in the  
30 City of San Francisco, State of California, by Special Agents of the Federal  
31 Bureau of Investigation, upon a warrant issued on July 25, 1951, by Howard V.  
32 Calverley, United States Commissioner for the Southern District of California.

1 pursuant to a verified complaint charging said petitioner and one William  
2 Schneiderman with conspiracy to commit offenses against the United States pro-  
3 hibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10,  
4 and 18 U.S.C. (1948 Ed.) 2385.

5 III

6 That following said petitioner's arrest he was taken without delay  
7 on July 26, 1951, before the nearest United States Commissioner, namely, Honorable  
8 Francis St. J. Fox, at San Francisco, California, who then and there arraigned  
9 said petitioner and set bail in the amount of \$75,000 pending removal to  
10 this district. Thereafter, on or about the 27th day of July, 1951, an applica-  
11 tion was made to the Honorable Louis E. Goodman, Judge of the United States  
12 District Court for the Northern District of California, for reduction of said  
13 bail. Following a full hearing on said application, said District Judge modified  
14 the order of the Commissioner, and reduced bail of the petitioner to  
15 the sum of \$50,000 pending removal of the petitioner to this district, and in  
16 default thereof ordered the petitioner committed to the custody of the United  
17 States Marshall in San Francisco, California. Thereafter, on July 28, 1951,  
18 the petitioner herein filed a petition for writ of habeas corpus, which petition  
19 was heard by the Honorable Louis E. Goodman, Judge of the United States District  
20 Court for the Northern District of California, for the purpose of obtaining a  
21 further reduction of bail. This petition was denied.

22 IV

23 The grand jury for the Southern District of California, in and for the  
24 Central Division, met on the 27th, 30th, and 31st days of July, 1951, and, after  
25 hearing the evidence presented, did on the 31st day of July, 1951, return an in-  
26 dictment against the petitioner herein and eleven other named defendants, a cer-  
27 tified copy of which is attached hereto as Exhibit "A". That said grand jury re-  
28 commended bail in the amount of \$75,000 for the petitioner herein and, on the  
29 return of the indictment, said amount of bail was approved by Judge James M.  
30 Carter, before whom the said indictment was returned. On August 1, 1951, fol-  
31 lowing the return of the indictment herein, the petitioner was removed from the  
32 City and County of San Francisco and brought to the County of Los Angeles, where

1 his custody was delivered to the respondent herein, James J. Boyle, United  
2 States Marshal for the Southern District of California.

3 V

4 On the 2nd day of August, 1951, the petitioner herein was arraigned  
5 on said indictment and, at the request of petitioner herein, the plea on said  
6 indictment was continued until the 13th day of August, 1951. On the 13th day of  
7 August, 1951, at the petitioner's request, the plea on said indictment was again  
8 continued until the 20th day of August, 1951. On the 16th day of August, 1951,  
9 on petitioner's request, the Order setting said matter for plea on August 20th,  
10 1951, was vacated and the plea on said indictment was again continued, at peti-  
11 tioner's request, until the 22nd day of August, 1951. On August 22nd, 1951, the  
12 plea was continued to August 29th, 1951, and on August 29th, 1951, the petitioner  
13 herein entered a plea of not guilty before the Honorable Wm. C. Mathes, to whose  
14 Court the case was transferred for all further proceedings.



1 VI

2 Following the proceedings set forth in paragraphs IX to XIX of  
3 the petition herein and after the opinion by the United States Court of Appeals  
4 for the Ninth Circuit in the case of Philip Marshall Connelly, petitioner, v.  
5 The United States District Court in and for the Southern District of California,  
6 Central Division, and Honorable James M. Carter, Judge thereof, respondents  
7 (No. 13053, decided August 24, 1951), was rendered, Judge James M. Carter did, on  
8 the 29th day of August, 1951, disqualify himself as to both Philip Marshall  
9 Connelly and the petitioner herein, and transferred all proceedings in said  
10 case of United States v. Schneiderman, et al., to Judge Paul J. McCormick,  
11 Presiding Judge of the United States District Court for the Southern District of  
12 California. Judge Paul J. McCormick on the same date assigned said case to  
13 Judge Wm. C. Mathes for all further proceedings. Thereafter, on the 29th day  
14 of August, 1951, a motion was made before the Honorable Wm. C. Mathes to reduce  
15 the bail of the petitioner herein, and following a full hearing lasting two  
16 days an order was made on August 30, 1951, reducing the amount of bail set on  
17 said indictment to the sum of \$50,000. That petitioner has not given such bail  
18 and is detained by respondent pursuant to the proceedings aforesaid; that in  
19 said hearings before Judges Wm. C. Mathes and Louis E. Goodman the same matters  
20 were raised as are raised in the said petition, and said matters have already  
21 been litigated.

22 VII

23 That the order of said Judge William C. Mathes fixing bail in the  
24 amount of \$50,000 does not, under the circumstances herein involved, constitute  
25 an excessive requirement of bail in accordance with the Eighth Amendment of  
26 the Constitution of the United States, and does not amount to a violation of  
27 said Amendment or the Fifth Amendment thereto, and does not show any abuse of  
28 discretion by said Judge William C. Mathes.

29 VIII

30 That named in the indictment above-mentioned, as unindicted co-con-  
31 spirators with the petitioner herein, are: Robert G. Thompson, Henry Winston,  
32 Gilbert Green, and Gus Hall. That the said last-named individuals were defendants

1 in the case of United States v. Dennis, et al., who were convicted in the  
2 Southern District of New York on a violation of the same Act under which the  
3 above-mentioned indictment was returned, and which conviction was, on June 4,  
4 1951, affirmed by the Supreme Court of the United States. That, thereafter,  
5 said last-named persons failed to appear and surrender to serve the sentence  
6 theretofore imposed and on July 2, 1951, bench warrants were ordered issued by  
7 the United States District Court for the Southern District of New York for said  
8 persons, and on July 3, 1951, the bonds theretofore posted (referred to in the  
9 petition herein) by said persons were ordered forfeited by that court. The  
10 nature of the offense charged in the indictment herein is the incitement of  
11 rebellion looking to the overthrow of the government of the United States by  
12 force and violence and disloyalty to the United States. Under the facts and  
13 circumstances here involved the defendants in said indictment, including the  
14 petitioner herein, lack the usual incentive of respect to said government.  
15 Your respondent alleges that the petitioner herein is a poor security risk  
16 and that unless a substantial bail is required of said petitioner, said  
17 petitioner would not appear to answer the charges contained in the indictment  
18 herein.

19 IX

20 That in none of the cases mentioned in EXHIBITS "A" and "B" of the peti-  
21 tion herein, save and except the two New York cases of United States v. Dennis  
22 and United States v. Flynn, is the charge the same as is contained in the indict-  
23 ment herein, all of said cases being routine cases involving violations of  
24 various federal statutes.

25 WHEREFORE, the respondent, James J. Boyle, United States Marshall for  
26 the Southern District of California, having made due and full answer to the writ  
27 of habeas corpus heretofore issued herein, pursuant to the petition for writ of  
28 habeas corpus, respectfully prays that the petition for writ of habeas corpus  
29 be dismissed and that the petitioner, Ernest Otto Fox, be remanded to re-  
30 spondent's custody to be dealt with according to the laws of the United States  
31 of America.

32 /s/ James J. Boyle

JAMES J. BOYLE

United States Marshal for the  
Southern District of California

1 UNITED STATES OF AMERICA }  
2 Southern District of California } ss.

3 JAMES J. BOYLE, United States Marshal for the Southern  
4 District of California, being first duly sworn, on his oath  
5 deposes and says:

6 That he is the person who makes the aforesaid return;  
7 that he has read the same and knows the contents thereof, and  
8 that the same is true according to the best of his knowledge and  
9 belief.

10

11

12

/s/ James J. Boyle  
JAMES J. BOYLE

13

14

15 SUBSCRIBED and SWORN to before me

16 this 6th day of September, 1951

17 EDMUND L. SMITH  
18 Clerk, United States District Court  
Southern District of California

19 By /s/ Charles A. Secty Deputy

20

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31



IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIAM SCHNEIDERMAN,  
DOROTHY ROSENBLUM HEALEY,  
ALBERT JASON LIMA,  
OLETTA O'CONNOR YATES,  
CARL RUDE LAMBERT,  
PHILIP MARSHALL CONNELLY,  
ROSE CHERWIN KUSNITZ,  
AL RICHMOND, also known as  
Abraham Richman,  
ERNEST OTTO FOX, also known as  
Ernest Otto Fuchs,  
HENRY STEINBERG,  
LORETTA STARVUS STACK, and  
MARY BERNADETTE DOYLE,

Defendants.

No. \_\_\_\_\_ CD  
(U.S.C., Title 18, Sec. 11  
1946 Ed. U.S.C., Title 18,  
Sec. 371948 Ed.) Section 3  
of the Smith Act, 54 Stat.  
671 - Conspiracy to violate  
the Smith Act)

I N D I C T M E N T

The grand jury charges:

(1) From and on or about April 1, 1945, and continuously, thereafter up to and including the date of the filing of this indictment, in the Southern District of California, and elsewhere, WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETTA O'CONNOR YATES, CARL RUDE LAMBERT, PHILIP MARSHALL CONNELLY, ROSE CHERWIN KUSNITZ, AL RICHMOND, also known as Abraham Richman, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, HENRY STEINBERG, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, the defendants herein, unlawfully, wilfully, and knowingly did conspire with each other and with William Z. Foster, Eugene Dennis, John B. Williamson, Jacob Stackel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter, and Gus Hall, co-conspirators but not defendants herein, and with divers other persons to the grand jury unknown, to commit offenses against the United States prohibited by Section 2 of the

Smith Act 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C. (1948 Ed.) 2385, by so conspiring (1) unlawfully, wilfully, and knowingly to advocate and teach the duty and necessity of overthrowing the Government of the United States by force and violence, and (2) unlawfully, wilfully, and knowingly to organize and help organize as the Communist Party of the United States of America a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, in violation of Section 3 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 11, and 18 U.S.C. (1948 Ed.) 371;

(2) It was part of said conspiracy that said defendants and co-conspirators would become members, officers, and functionaries of said Party, knowing the purposes of the Party, and in such capacities would assume Leadership in said Party and responsibility for carrying out its policies and activities up to and including the date of the filing of this indictment;

(3) It was further part of said conspiracy that said defendants and co-conspirators would cause to be organized Groups, Clubs, Sections, District and State Units of said Party in the State of California and elsewhere and would recruit and encourage recruitment of members of said Party, concentrating on recruiting persons employed in key basic industries and plants.

(4) It was further a part of said conspiracy that said defendants and co-conspirators would publish and circulate and cause to be published and circulated books, articles, magazines, and newspapers teaching and advocating the duty and necessity of overthrowing and destroying the Government of the United States by force and violence;

(5) It was further a part of said conspiracy that said defendants and co-conspirators would write and cause to be written articles and directives in publications of the Communist Party of the United States of America including, but not limited to,

"Political Affairs," "Daily People's World," "Daily Worker," and "The Worker," teaching and advocating the necessity of overthrowing and destroying the Government of the United States by force and violence;

(6) It was further a part of said conspiracy that said defendants and co-conspirators would conduct and cause to be conducted schools and classes for indoctrination of recruits and members of said Party in the principles of Marxism-Leninism in which would be taught and advocated the duty and necessity of overthrowing and destroying the Government of the United States by force and violence as speedily as circumstances permit;

(7) It was further a part of said conspiracy that said defendants and co-conspirators would agree upon and carry into effect detailed plans for the vital parts of the Communist Party of the United States of America to go underground in the event of emergency and from said underground position to continue in all respects the conspiracy described in paragraph (1);

(8) It was further a part of said conspiracy that said defendants and co-conspirators would use false names, passports, and other false documents in order to conceal their identities and activities as members and functionaries of said party;

(9) It was further a part of said conspiracy that said defendants and co-conspirators would do other and further things to conceal the existence and operations of said conspiracy; and

In pursuance of said conspiracy and to effect the object thereof, in the Southern District of California, the defendants and co-conspirators did commit, among others, the following

#### OVERT ACTS:

1. On or about July 17 and 18, 1948, WILLIAM SCHLIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LINA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, AL RICHMOND, also known as Abraham Richman, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, defendants herein, did attend and participate in a Convention of



the Communist Party of the State of California at Park Manor, Sixth Street and Western Avenue, Los Angeles, California;

2. On or about August 20, 1948, MARY BERNADETTE DOYLE, a defendant herein, did attend and participate in a meeting of the Morgan Hull Club in San Diego, California;

3. On or about August 21, 1948, LORETTA STARVUS STACK, a defendant herein, did prepare and issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

4. On or about August 21, 1948, AL RICHMOND, also known as Abraham Richman, a defendant herein, did issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

5. On or about January 21, 1949, HENRY STEINBERG, a defendant herein, did attend and participate in a meeting;

6. On or about May 20, 1949, ROSE CHERNIN FUSNITZ, a defendant herein, did attend and participate in a meeting held at 847 South Grand Avenue, Los Angeles, California;

7. On or about December 7, 1949, WILLIAM SCHNEIDERMAN and DOROTHY ROSENBLUM HEALEY, defendants herein, did attend and participate in a meeting at Park View Manor, 2200 West Seventh Street, Los Angeles, California;

8. On or about January 20, 1950 WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at Embassy Auditorium, Los Angeles, California.

9. On or about February 15, 1950, MARY BERNADETTE DOYLE, a defendant herein, did attend and participate in a meeting held at 7891 Normandie Street, San Diego, California;

10. On or about April 6, 1950, WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at 3875 City Terrace Boulevard, Los Angeles, California;

11. On or about June 12, 1950, ALBERT JASON LINA, a defendant herein, did attend and participate in a meeting at

2200 West Seventh Street, Los Angeles, California;

12. On or about June 24, 1950, PHILIP MARSHALL CONNELLY, MARY BERNADETTE DOYLE, and ALBERT JASON LIVA, defendants herein, did attend and participate in a meeting at Park Manor, 607 South Western Avenue, Los Angeles, California;

13. On or about November, 1950, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, a defendant herein, did prepare and issue a directive and cause it to be circulated;

14. On or about April 9, 1951, CARL RUDE LAMBERT, a defendant herein, did attend and participate in a meeting at 405 De La Guerra Street, Santa Barbara, California;

15. On or about July 24, 1951, OLITA O'CONNOR YATES, a defendant herein, did attend and participate in a meeting at 124 West Sixth Street, Los Angeles, California.

A TRUE BILL

Foreman

ERNEST A. TOLIN,  
United States Attorney.

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK,

Petitioner,

vs.

No. 13436

JAMES J. BOYLE, United  
States Marshal,

Respondent.

AL RICHMOND,

Petitioner,

vs.

No. 13437

JAMES J. BOYLE, United  
States Marshal,

Respondent.

PHILIP MARSHALL CONNELLY,

Petitioner,

vs.

No. B 438

JAMES J. BOYLE, United  
States Marshal,

Respondent.



No. 13439

No. 13440

No. 13441

No. 13442

No. 13443

—

•

1 OLETA O'CONNOR YATES,  
2 Petitioner,

3 vs.

No. 13444

4 JAMES J. BOYLE, United  
States Marshal,

Respondent.

7 ROSE CHERNIN KUSNITZ;

8 Petitioner,

9 vs.

No. 13445

0 JAMES J. BOYLE, United  
States Marshal,

Respondent.

3 MARY BERNADETTE DOYLE.

4 . . . . . Petitioner.

5 vs.

No. 13446.

6 JAMES J. BOYLE, United  
States Marshal,

Respondent.

9 ALBERT JASON LIMA,

0 Petitioner.

1 vs.

No. 13447

2 JAMES J. BOYLE, United  
States Marshal.

Respondent.

## STIPULATION

IT IS HEREBY STIPULATED, CONSENTED AND AGREED by and between the attorneys for petitioners above named and the attorneys for the respondent herein that the petitions for writs of habeas corpus in the above entitled causes shall be consolidated and treated as

1 a joint petition for writ of habeas corpus.

2 DATED: This 8th day of September, 1951.

3  
4 /s/ Ben Margolis

5 Ben Margolis

6  
7 /s/ Daniel G. Marshall

8 Daniel G. Marshall

9 Attorneys for Petitioner Philip  
Marshall Connelly

10 MARGOLIS and McTERNAN

11 By /s/ Ben Margolis  
12 Ben Margolis

13 /s/ Leo A. Sullivan

14 Leo A. Sullivan

15 Attorneys for remaining Petitioners

16  
17 ERNEST A. TOLIN  
United States Attorney

18 By /s/ Ray H. Kinnison  
19 Ray H. Kinnison

Assistant United States Attorney

20 Attorneys for Respondent

21  
22  
23 ORDER:

24 It is so ordered.

25  
26 /s/ Ben Harrison

27 JUDGE of the United States District



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7  
8 IN THE DISTRICT COURT OF THE UNITED STATES

9 SOUTHERN DISTRICT OF CALIFORNIA

10 CENTRAL DIVISION

11  
12 LORETTA STARVUS STACK,

13 Petitioner,

No. 13436-BH

14 vs.

15 JAMES J. BOYLE, United  
16 States Marshal,

17 Respondent.

18 AL RICHMOND,

19 Petitioner,

No. 13437-BH

20 vs.

21 JAMES J. BOYLE, United  
22 States Marshal,

23 Respondent.

24 PHILIP MARSHALL CONNELLY,

25 Petitioner,

No. 13438-BH

26 vs.

27 JAMES J. BOYLE, United  
28 States Marshal,

29 Respondent.  
30  
31  
32

1 DOROTHY ROSENBLUM HEALEY,

2 Petitioner,

No. 13439-BH

3 vs.

4 JAMES J. BOYLE, United  
5 States Marshal,

6 Respondent.

7 ERNEST OTTO FOX,

8 Petitioner,

No. 13440-BH

9 vs.

10 JAMES J. BOYLE, United  
11 States Marshal,

12 Respondent.

13 WILLIAM SCHNEIDERMAN,

14 Petitioner,

No. 13441-BH

15 vs.

16 JAMES J. BOYLE, United  
17 States Marshal,

18 Respondent.

19 CARL RUDE LAMBERT,

20 Petitioner,

No. 13442-BH

21 vs.

22 JAMES J. BOYLE, United  
23 States Marshal,

24 Respondent.

25 HENRY STEINBERG,

26 Petitioner,

No. 13443-BH

27 vs.

28 JAMES J. BOYLE, United  
29 States Marshal,

30 Respondent.

31

32

1 OLETA O'CONNOR YATES,

2 Petitioner,

No. 13444-BH

3 vs.

4 JAMES J. BOYLE, United  
5 States Marshal;

6 Respondent.

7 ROSE CHERNIN KUSNITZ,

8 Petitioner,

No. 13445-BH

9 vs.

10 JAMES J. BOYLE, United  
11 States Marshal,

12 Respondent.

13 MARY BERNADETTE DOYLE,

14 Petitioner,

No. 13446-BH

15 vs.

16 JAMES J. BOYLE, United  
17 States Marshal,

18 Respondent.

19 ALBERT JASON LIMA,

20 Petitioner,

No. 13447-BH

21 vs.

22 JAMES J. BOYLE, United  
23 States Marshal,

24 Respondent.

25  
26 MEMORANDUM OPINION

27  
28 The above petitions for writs of habeas corpus were con-  
29 solidated for hearing and the sole question for this court to de-  
30 termine in each matter is whether the bail of \$50,000 is excessive,  
31 and by reason thereof petitioners are unlawfully deprived of their  
32 liberty contrary to the provisions of the Eighth Amendment to the



1 Constitution of the United States.

2 It appears from the records of this court and the tran-  
3 script of various proceedings that the question of bail as to some  
4 of the petitioners has been before two district judges of this dis-  
5 trict, one in San Francisco (Judge Goodman), and one in New York  
6 (Judge Dimock). (See Cr. file No. 21883 of this district).

7 Now through these proceedings petitioners seek to have  
8 me ignore the record, absolutely strike from my mind the separate  
9 rulings by four district judges, and indirectly hold that the bail  
10 fixed is excessive and each of said judges has abused the dis-  
11 cretion vested in him.

12 Counsel for petitioners claim that bail in excess of  
13 \$5,000 would be prohibitive, therefore, the court should fix bail  
14 in that amount. In other words, petitioners contend that bail  
15 should be fixed in accordance with their ability to furnish bail.  
16 To follow their argument to a natural conclusion, if they could  
17 raise bail in an amount not in excess of \$10, the bail should be  
18 so fixed. If such a rule were adopted all prisoners now waiting  
19 for trial on bailable offenses would be entitled to have bail  
20 fixed in accordance with their respective abilities.

21 ) As stated in U. S. ex rel. Rubinstein v. Mulcahy etc.,  
22 155 F. (2d) 1002: "The purpose of bail before trial is to insure  
23 the presence of the accused when required without the hardship of  
24 incarceration before guilt has been proved and while the presump-  
25 tion of innocence is to be given effect." (See also Rule 46(c)  
26 F.R.C.P.).

27 How much should the bail of petitioners be to meet the  
28 requirements of the foregoing quotation? The Grand Jury that heard  
29 the evidence recommended \$75,000. How can I say that all who have  
30 exercised their discretion are wrong because I may or may not agree  
31 with them?

32 When a person is released on bail before trial such per-

1 son is a calculated risk and the amount of bail resolves itself  
2 into a matter of judgment. Sometimes the courts are wrong but  
3 fortunately the defendants usually appear. The offenses charged  
4 are very serious and the court realizes as a matter of common  
5 knowledge that those charged with similar and related offenses the  
6 forfeitures have been above average and apprehension after for-  
7 feiture has been nil. Should the court ignore these facts?

8 Perhaps through these proceedings our reviewing courts  
9 can furnish the trial courts with a yardstick to determine the  
10 amount of bail required to assure the presence at the time of  
11 trial of the petitioners and others similarly charged. My only  
12 hope is that their judgment on such calculated risks may be cor-  
13 rect.

14 I have ordered the transcript of the proceedings before  
15 Judge Mathes filed as an exhibit in these proceedings, together  
16 with the records of the court on the motions for reduction of bail  
17 before him in the criminal case, and have admitted in evidence the  
18 transcript of the proceedings in Healey et al. v. Boyle, No. 13361  
19 to No. 13370. I have examined such proceedings and have consid-  
20 ered the same and am unable to conclude that the amount of bail,  
21 fixed in each instance is either arbitrary or the result of an  
22 abuse of discretion. I further find that such amounts as were  
23 fixed are necessary to assure the presence of the petitioners in  
24 the further proceedings in the criminal case and for no other pur-  
25 pose.

26 The procedure followed in these matters is that outlined  
27 in the Rubenstein case (155 F. (2d) 1002). The record herein in-  
28 dicates that such procedure is cumbersome and unnecessarily delay  
29 the ultimate disposition of matters that are entitled to expedi-  
30 tious action by the courts.

31 I make these comments not in criticism of the present  
32 method but rather as an invitation to our reviewing courts to



1 provide a more expeditious procedure. With my ruling in this case,  
2 five district judges have passed on the reasonableness of the  
3 amount of bail. If we are in error petitioners have had to  
4 languish in jail to meet the requirements of legal formalism.

5 The petition for writ of habeas corpus in each matter is  
6 hereby denied and the petition in each instance is hereby dis-  
7 missed.

8 The government is ordered to submit forthwith proposed  
9 order of dismissal of said petitions.

10 DATED: This 12th day of September, 1951.

11  
12 /s/ Ben Harrison

13 JUDGE  
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30  
31  
32



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United States Attorney  
2  
3 RAY H. KINNISON  
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Telephone: MADison 7411  
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7 Attorneys for Respondent  
8

9 IN THE UNITED STATES DISTRICT COURT  
10 IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
11 CENTRAL DIVISION

12 LORETTA STARVUS STAGK, AL  
RICHMOND, PHILIP MARSHALL  
13 CONNELLY, DOROTHY ROSENBLUM  
HEALEY, ERNEST OTTO FOX,  
14 WILLIAM SCHNEIDERMAN, CARL  
RUDE LAMBERT, HENRY STEINBERG,  
15 OLETA O'CONNOR YATES, ROSE  
CHERNIN KUSNITZ, MARY BERNADETTE  
16 DOYLE, and ALBERT JASON LIMA,

17 Petitioners,

18 v.

19 JAMES J. BOYLE, United  
States Marshal,

20 Respondent.  
21

Nos. 13436/13447

ORDER DENYING PETITIONS FOR  
WRITS OF HABEAS CORPUS AND  
DISCHARGING ORDERS TO SHOW  
CAUSE WHY WRITS OF HABEAS  
CORPUS SHOULD NOT BE GRANTED.

22 The above-entitled matters came on regularly for hearing on

23 September 6, 1951, before the Honorable Ben Harrison, Judge presid-  
24 ing, on Orders to Show Cause Why Writs of Habeas Corpus should not  
25 be granted, the petitioner Philip Marshall Connelly being represent-  
26 ed by his attorneys, Ben Margolis, Esq., and Daniel G. Marshall,  
27 Esq. and the remaining petitioners by their attorneys Margolis and  
28 McTernan, Esqa., by Ben Margolis, Esq., and the respondent, James  
29 J. Boyle, being represented by his counsel, Ernest A. Tolin, United  
30 States Attorney for the Southern District of California, and Ray H.  
31 Kinnison, Assistant United States Attorney for the Southern District  
32 of California, and A. L. Wirin, Esq., appearing as amicus curiae; the

1 Court having ordered upon the stipulation of the attorneys for the  
2 respective parties that the petitions for writs of habeas corpus  
3 be consolidated and treated as a joint petition for writ of habeas  
4 corpus; and the Court having read the petitions for Writs of Habeas  
5 Corpus on file, the Return thereto filed by the respondent to said  
6 petitions for Writs of Habeas Corpus herein; and the Court finding  
7 that on July 31, 1951, and prior to the hearing herein, a True Bill  
8 of indictment was returned in this Court before Judge James M.  
9 Carter, by the Grand Jury for the Southern District of California,  
10 charging the petitioners and others with conspiracy to commit of-  
11 fenses against the United States prohibited by Section 2 of the  
12 Smith Act, 54 Stat. 671, 18 U.S.C. (1946 ed.) 10, and 18 U.S.C.  
13 (1948 ed.) 2385, and said indictment having been ordered filed  
14 under Case No. 21883-CD, and on recommendation of said Grand Jury,  
15 Judge James M. Carter then set bail for the petitioner William  
16 Schneiderman in the amount of \$100,000 and in the amount of \$75,000  
17 for the remaining petitioners, and thereafter, on the 7th day of  
18 August, 1951, petitioners filed with said Judge James M. Carter a  
19 motion to reduce the amount of bail; that the said Judge James M.  
20 Carter on August 29, 1951 disqualified himself from any further  
21 proceedings in the prosecution of the petitioners herein including  
22 proceedings on bail; that the said proceedings were then assigned  
23 by Chief Judge Paul J. McCormick to Judge William C. Mathes and the  
24 aforesaid motions to reduce bail came on for hearing before the said  
25 Judge William C. Mathes, and following a full hearing on said motions  
26 Judge William C. Mathes on August 30, 1951 did reduce the amount of  
27 bail for each of the petitioners to \$50,000, and the Court having  
28 taken testimony on the petition herein and having heard arguments,  
29 and the Court being fully advised in the premises, and it appearing  
30 to the satisfaction of the Court, and the Court finding for the  
31 reasons aforesaid that the relief prayed for in the aforesaid peti-  
32 tions for Writs of Habeas Corpus should not be granted, that the

1 orders to show cause why the petitions for writ of habeas corpus.  
2 should not be granted should be discharged, and that said Petitions  
3 for Writs of Habeas Corpus should be denied, and said cause having  
4 been submitted to the Court for decision;

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the aforesaid  
6 Petitions for Writs of Habeas Corpus heretofore filed in the above  
7 entitled matters be, and the same hereby are, denied; and

8 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the aforesaid  
9 Orders to show Cause why the Petitions for Writs should not be  
10 granted be, and the same hereby, are discharged.

11 DATED: This 12th day of September, 1951,  
12

13 /s/ Ben Harrison  
14 United States District Judge

15 Received copy of the within  
16 Order Denying Petitions for  
17 Writs of Habeas Corpus, Dis-  
18 charging Orders to Show Cause,  
19 and Dismissing Writ of Habeas  
20 Corpus this 12th day of Septem-  
21 ber, 1951, and approved as to  
22 form.

23 Ben Margolis

24 Daniel G. Marshall

25 Attorneys for Petitioner Philip  
26 Marshall Connelly

27 MARGOLIS and McTERNAN

28 By Ben Margolis

29 Attorneys for remaining Petitioners  
30  
31  
32



1 Ben Margolis  
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Vandike 7153  
3 and  
4 Daniel G. Marshall  
458 South Spring Street  
Los Angeles 13, California  
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6 Attorneys for Petitioner- Appellant Philip Marshall Connelly  
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8 Attorneys for remaining  
Petitioners-Appellants

8 IN THE UNITED STATES DISTRICT COURT  
9 IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
10 CENTRAL DIVISION  
11

12 LORETTA STARVUS STACK, AL  
13 RICHMOND, PHILIP MARSHALL  
14 CONNELLY, DOROTHY ROSENBLUM  
15 HEALEY, ERNEST OTTO FOX,  
16 WILLIAM SCHNEIDERMAN, CARL  
RUDE LAMBERT, HENRY STEINBERG,  
OLETA O'CONNOR YATES, ROSE  
CHERNIN KUSNITZ, MARY BERNADETTE  
DOYLE and ALBERT JASON LIMA,

Nos. 13436/13447

17 Petitioners-Appellants,

NOTICE OF APPEAL

18 vs.

19 JAMES J. BOYLE, United States  
Marshal,

20 Respondent.  
21  
22

23 NOTICE IS HEREBY GIVEN that the petitioners-appellants  
24 above named hereby appeal to the United States Court of Appeals  
25 for the Ninth Circuit from the order denying the petitions for  
26 writs of habeas corpus herein and discharging the orders to  
27 show cause why the petitions for writs should not be granted,  
28 made and entered in this action by the United States District  
29 Court, Honorable Ben Harrison, Judge Presiding, on the 6th day  
30 of September, 1951.

31 DATED: This 12th day of September, 1951.  
32

~~78~~ Ben Margolis

Ben Margolis

3 /s/ Daniel G. Marshall

Daniel G. Marshall

Attorneys for Petitioner-Appellant  
Philip Marshall Connelly

MARGOLIS and McTERNAN

By: /s/ Ben Margolis

Ben Margolis

/s/ Leo A. Sullivan

Leo A. Sullivan

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Appellants

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and  
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Petitioners

8 IN THE UNITED STATES DISTRICT COURT  
9 IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
10 CENTRAL DIVISION

11 LORETTA STARVUS STACK, AL  
12 RICHMOND, PHILIP MARSHALL,  
13 CONNELLY, DOROTHY ROSENBLUM  
HEALEY, ERNEST OTTO FOX,  
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RUDE LAMBERT, HENRY STEINBERG,  
OLETA O'CONNOR YATES, ROSE  
CHERNIN KUSNITZ, MARY BERNADETTE  
15 DOYLE and ALBERT JASON LIMA,

Petitioners,

17 vs.

18 JAMES J. BOYLE, United  
States Marshal,

Respondent.

Nos. 13436/13447

DESIGNATION OF RECORD

22 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE  
23 SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION: ERNEST A. TOLIN,  
24 UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

25 The petitioners above named designate for inclusion in the  
26 record on appeal herein a complete record of all the proceedings  
27 and evidence in the above entitled causes including the petitions  
28 for writs of habeas corpus, the orders to show cause, the stipula-  
29 tion and order treating the petitions as a joint petition for writ  
30 of habeas corpus, the return of the respondent, the reporter's  
31 transcript of hearing on September 6, 1951, the order denying the  
32 petitions and discharging the orders to show cause, the notice of



1 appeal, this designation of the record and any stipulations  
2 between the parties relative to the record on appeal herein or  
3 the argument of the appeal.

4 DATED: September 12, 1951.

5  
6 /s/ Ben Margolis  
7 Ben Margolis

8 /s/ Daniel G. Marshall  
9 Daniel G. Marshall

10 Attorneys for Petitioner Philip  
11 Marshall Connelly

12 MARGOLIS and McTERNAN

13 By /s/ Ben Margolis  
14 Ben Margolis

15 /s/ Leo A. Sullivan  
16 Leo. A. Sullivan

17 Attorneys for remaining Petitioner

18 Agreed to:

19 /s/ Ernest A. Tolin  
20 United States Attorney